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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,862	07/06/2001	Cong Thanh Dinh	577-516 (T&B 1632)	3336
23869	7590	02/04/2004	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			STERLING, AMY JO	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 02/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/899,862	DINH ET AL.	
	Examiner	Art Unit	
	Amy J. Sterling	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 November 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 17-20,22 and 23 is/are allowed.
- 6) Claim(s) 1,3-7,9,10-16 and 21 is/are rejected.
- 7) Claim(s) 2,8,24 and 25 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 December 2002 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

This is the **Final Office Action** for application number 09/899,862 Hanger Bar Assembly, filed on 7/6/01. Claims 1-25 are pending. This **Final Office Action** is in response to applicant's reply dated 11/17/03. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1, 3-7, 9-10, 13-16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5044582 to Walters and in view of United States Patent No. 5803653 to Zufetti and further in view of 4909405 to Kerr, Jr.

Walters shows the basic inventive concept including, a hanger bar assembly for supporting an outlet box between spaced apart support elements having an extruded first channel member (12) being longitudinally slidably engagable with an extruded second channel member (11), of a substantially similar cross section profile, forming a longitudinally adjustable support bar, the first and second channels each having a channel interior, and a portion of the first channel (12) extends into the second channel (11) interior, and a clamping device (16, 17), wherein the clamp includes a bracket (15) slidably positionable over the support bar and engagable with the outlet box (15), the clamping device (18) further including a fastener (21) securable with the bracket such that upon securing the fastener to the bracket (15) the first (12) and second channel members (11) are clamped together between the bracket and the outlet box. Walters

also shows a securement device (13), which includes a pair of end plates, with a spike, (39) with an elongate portion, having a substantially uniform cross-section terminating in a tapered endpoint, (the spike has a plurality of tapers and end points, See Fig. 8).

Walters also shows wherein the end plates (13) are secured to ends of the support bar (10) for securing the support bar to the spaced support elements

Walters does not show wherein the first and second channel members include apertures formed therein to receive fastening hardware to secure the end plates to the support bar.

Kerr Jr. shows a support bar (10) which has first and second channel members (12, 14) with end plates (28) wherein the end plates (28) are secured to the ends of the support bar (10) wherein the first and second channel members (12, 14) include apertures (See Fig. 2) formed therein to receive fastening hardware (52) to secure the end plates to the support bar, used for a more secure attachment of the end plate to the support bar. Therefore it would have been obvious to someone skilled in the art to have modified the support bar of Walters to have an aperture, in order to have a more secure attachment of the end plate to the support bar.

Walters and Kerr, Jr. do not show wherein the second channel extends into the first channel interior when the first and second channels are engaged, or a plurality of longitudinally extending first grooves and a plurality of longitudinally extending first rails, the second channel member having a plurality of longitudinally extending second rails and a plurality of longitudinally extending second grooves, the first rails being slidingly received in the second grooves and the second rails being slidingly received in the first

grooves such that rotational movement between the first and second channel members is resisted or wherein the first and second channel members upon engagement form a plurality of laterally spaced interlocking rail and groove combinations that prevent lateral separation of the first channel member from the second channel member.

Zuffetti shows channel shaped members (2) wherein the first channel member extends into the second channel member and the second channel extends into the first channel interior when the first and second channels are engaged, wherein the channel members are slidingly engagable whereby the first channel member has a plurality of longitudinally extending first grooves (between 4 and 5) and a plurality of longitudinally extending first rails (5), the second channel member having a plurality of longitudinally extending second rails (7) and a plurality of longitudinally extending second grooves (between 7 and other side wall of channel member), the first rails being slidingly received in the second grooves and the second rails being slidingly received in the first grooves and wherein the first and second channel members upon engagement form a plurality of laterally spaced interlocking rail and groove combinations that prevent lateral separation of the first channel member from the second channel member, used so that rotational movement between the first and second channel members is resisted. Therefore it would have been obvious to someone skilled in the art at the time the invention was made from the teachings of Zuffetti to have modified the channel members of Walters and Kerr, Jr. by modifying their shape to have the configuration shown above, in order to prevent rotation between channel members.

Claims 11 and 12 are rejected under are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5044582 to Walters and in view of United States Patent No. 5803653 to Zufetti and 4909405 to Kerr, Jr. and further in view of United States Patent No. Des. 395816 to Colodny.

Walters, Kerr, Jr. and Zufetti show the basic inventive concept with the exception that they do not show wherein the first channel member includes a first and second spaced side wall extending from a connecting wall to define a channel, the first side wall including one of the plurality of apertures formed therein and wherein the first channel member second side wall includes a second and a third of the plurality of apertures formed therein.

Colodny shows a brace member in which teaches a channel member which includes a first and second spaced side wall extending from a connecting wall to define a channel, the first side wall including one of the plurality of apertures formed therein and wherein the first channel member second side wall includes a second and a third of the plurality of apertures formed therein, used in order to more securely support the desired object to the brace. Therefore it would have been obvious to someone skilled in the art at the time the invention was made from the teachings of Colodny to have modified the design of channel members of Walters, Kerr, Jr. and Zuffetti by modifying their shape to have the configuration shown above, in order to more securely attach a device to the device.

Response to Arguments

In response to applicant's argument that Zuffetti is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Zuffetti, Kerr, Jr. Walters and the present alleged invention are in the art of slidingly engaging two tubes together for a designated purpose. Telescoping tubes are all within the same art and therefore this argument is unpersuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to keep telescoping tubes from rotating relative to each other was generally available to one of ordinary skill in the art and therefore, the motivation to combine as cited above meets the present test and the argument is unpersuasive.

Allowable Subject Matter

Claims 17-20, 22 and 23 are allowed.

Claims 2, 8, 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not show the first and second channel members including a plurality of longitudinally extending shims extending therefrom. The prior art also does not show the hanger bar assembly whereby a first channel member being longitudinally slidably engagable with a second channel member forming a longitudinally adjustable support bar, the first channel and the second channel having the same cross-sectional profiles. The prior art of record shows substantially similar cross-section profiles in that the channel members are the same shape, but does not show the same cross-sectional profile in that one channel member must be smaller than the other in order for them to slide together. In the present invention, the channel members are the same size. The prior art does not show wherein the first and the second channel members have a generally U-shaped cross-sectional profile, and the second channel member is inverted with respect to the first channel member.

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing

date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 703-308-3271. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine number for the Technology center is 703-872-9306 (formal amendments) or 703-308-3519 (informal amendments/communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 703-308-2168.


AJS
Amy J. Sterling
1/30/04


RAMON O. RAMIREZ
PRIMARY EXAMINER
ART UNIT 355-363 ~